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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

First supplementary reports due in 1992

Addendum

UKRAINE*

[31 August 1992]

1. It should be noted that since the submission of the initial report of Ukraine (CAT/C/5/Add.20 dated 30 January 1990), the provisions and requirements of the Convention against Torture have been observed in the country, as they were previously.

2. Since the proclamation of the independence of Ukraine on 24 August 1991, one of the most important elements of its internal policy has been the establishment of a State subject to the rule of law. This, together with other factors, has resulted in an intensification of the process of revision and improvement of the norms of Ukrainian domestic legislation, including the criminal law, the law governing criminal procedure and the law governing the enforcement of sentences and the administration of the prison system.

3. Considerable attention is being devoted to the practical application in national law of the principle of the primacy of international law. This is attested, in particular, by the Ukraine Act of 10 December 1991 "On the validity of international agreements in Ukrainian territory". The Act states that

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* For the initial report of Ukraine, see CAT/C/5/Add.20; for its consideration, see CAT/C/SR.52 and 53 and Official Records of the General Assembly, forty-fifth session, Supplement No. 44 (A/45/44) paras.503-532.

international agreements concluded and duly ratified by Ukraine shall form an integral part of the national law of Ukraine and shall be applied in accordance with the procedures laid down for provisions of national law.

4. At the same time, work is in progress in Ukraine on the broad lines of the reform of the system for the enforcement of sentences and the administration of prisons, taking account of international practice in this sphere, including the provisions of the Code of Conduct for Law Enforcement Officials and the Convention against Torture. Corresponding draft codes are being prepared on this basis. Thus, for example, the drafting of a new Code for the Enforcement of Sentences and the Administration of Prisons is actively under way in accordance with the decision of the Cabinet of Ministers of Ukraine of 11 July 1991 "On the main orientations of reform of the system for the enforcement of sentences and the administration of prisons". Commissions have also been set up to prepare drafts of a new Criminal Code and a new Code of Criminal Procedure for Ukraine. Meanwhile, corrections relating to certain particularly urgent issues are being introduced in the codes at present in force.

5. The Ukraine Act of 25 December 1991 "On the militia" also meets the requirements of international legal instruments, including the Convention against Torture. In particular, this Act states that the principles underlying the activities of the militia shall be legality, humanism, respect of the individual and social justice.

6. A provision of the Act to the effect that the militia shall perform its tasks impartially in full compliance with the law also meets the requirements of article 2 of the Convention. No exceptional circumstances may serve as grounds for any unlawful action or lack of action on the part of the militia.

7. The Act provides that the militia must respect the dignity and protect the rights of the individual irrespective of his or her social origin, property or other status, race or nationality, citizenship, age, language, education, religious views, sex or political or other convictions. Members of the militia may not disclose information which relates to the private lives of individuals or demean the honour and dignity of the individual.

8. A special section of the Ukraine Act "On the militia" sets forth the conditions for and limits on the use of physical force, riot control equipment and firearms. In this connection it is provided that in cases where the use of force cannot be avoided, such actions may not exceed the limits necessary to enable the militia to discharge its duties, and should be conducted so as to minimize possible damage to the health of offenders or other citizens.

9. The Ukraine Act "On the militia" and the Act "On criminal investigation activities" establish an exhaustive list of cases in which human rights and freedoms may be restricted. As a rule, such measures may be applied only upon authorization by the procurator.

10. When detaining or arresting individuals suspected of having committed an offence, law enforcement officials are guided by the laws on criminal procedure

and the regulations governing pre-trial detention, which prohibit the use of physical force or torture in respect of detainees or prisoners. Monitoring of the precise and strict observance of these rules is carried out in accordance with the Ukraine Act of 5 November 1991 "On the Procurator's Office" by the Office of the Procurator-General of Ukraine, which includes special units responsible for overseeing the observance of the law by preliminary investigators and investigators belonging to departments of the Interior Ministry, and also in places of detention. In 1991, criminal proceedings were brought against 34 officials of the Ministry of the Interior for exceeding their powers or official authority, inter alia in connection with the detention of citizens. Analysis shows that such offences are most frequently committed by officers on patrol or on point-duty and local inspectors in the militia and preliminary investigation services, and relatively rarely by State investigators or other officials.

11. Under the criminal legislation of Ukraine, the following are the principal penalties that may be applied to persons who have committed an offence: imprisonment; corrective labour without loss of freedom; deprivation of the right to hold a specific office or to pursue a specific activity; a fine; or public censure. Punishment in the form of assignment to a disciplinary battalion may be applied to short-service military personnel.

12. Besides the main forms of punishment, the following additional penalties can be applied to convicted persons: confiscation of property; deprivation of military or special rank; deprivation of parental rights.

13. Exceptionally, pending its complete abolition, the application of the death penalty by (shooting) is permitted for premeditated murder with aggravating circumstances, and also for certain other particularly serious offences. Persons who had not reached the age of 18 at the time of the commission of the offence, and women who were pregnant at the time of the commission of the offence or are pregnant when sentence is passed, may not be sentenced to death. The death penalty is not applied to women who are pregnant at the appointed time of execution.

14. In the process of work on updating the law, considerable attention is also being devoted to reducing the number of offences punishable by the death penalty. It has been the practice for some time not to apply the death penalty to profit-motivated offences. A bill under consideration by the Supreme Council of Ukraine proposes that the provisions imposing the death penalty for the following offences should be deleted from the Ukrainian Criminal Code: high treason; espionage; sabotage; armed robbery; actions which disrupt the work of corrective labour establishments; making or passing forged money or securities; violation of rules governing foreign currency operations; especially large-scale misappropriation of State or public property; rape; receiving bribes; making an attempt on the life of a member of the militia, the voluntary police or the armed forces in connection with their public order activities; and hijacking of aircraft.

15. The Cabinet of Ministers of Ukraine has approved a State "Programme for bringing the conditions of custody of convicted persons into line with international standards". The programme provides for men and women, and minors and adults, to be held separately in penal establishments. Persons serving custodial sentences retain their civil rights and duties subject to the restrictions provided for by law.

16. Restrictive regimes for prisoners in such establishments have been abolished; convicted prisoners are permitted to leave the premises for a short period in the event of a close relative's death or serious illness, to make long-distance telephone calls, to use electrical appliances and to watch television. Short monthly meetings with relatives have been authorized, and the amount of money allowed to convicted persons for the purchase of food and other essentials has been increased. Restrictions on correspondence with relatives have been lifted, and all foodstuffs except spirits may be received in parcels and packages.

17. Dietary standards for convicted persons and persons in custody have been raised to ensure the necessary calorie intake. Psychologists' posts have been created on the staffs of penal establishments and a special psychological and sociological service is being set up.

18. The right of convicted persons to submit declarations or complaints to any outside authority, including appropriate international bodies, is guaranteed.

19. In programmes for the training and retraining of senior officials of the Ministry of the Interior, considerable attention is being given to problems pertaining to respect for legal requirements, general humanitarian norms and principles, and professional ethics.